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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10	JUAN JOSE MARTINEZ-MADERA,	)	Civil No. 07 cv 2237 JLS (WMC)
11	Petitioner,	)	
12	v.	)	<b>EX PARTE APPLICATION TO DISMISS</b>
13	MICHAEL CHERTOFF, Secretary of	)	<b>OR ALTERNATIVELY SET TIME AND</b>
14	Department of Homeland Security, et al.,	)	<b>DATE FOR HEARING ON MOTION TO</b>
15	Respondents.	)	<b>CERTIFY CLASS ACTION</b>
16		)	[Civ. L. R. 41.1(b); 7.1; 5.1]

17 On November 26, 2007, Petitioner filed a Petition for Writ of Habeas Corpus seeking release  
 18 from Department of Homeland Security custody ("DHS") pending resolution of the Ninth Circuit's  
 19 review of his final removal order. On December 5, 2007, the Court issued an order to show cause,  
 20 granting the Government until Friday, January 4, 2008, to file a return. However, Petitioner failed to  
 21 serve the United States Attorney. Therefore, the U.S. Attorney's Office did not become aware of the  
 22 Petition until December 7, 2007, after issuance of this Court's order. On December 18, 2007, the  
 23 Government requested a one-month extension of time to file its return, which the Court granted. In  
 24 accordance with the new briefing schedule, the Government filed a return in opposition to the habeas  
 25 claim on February 1, 2008. Under the new schedule, Petitioner's traverse was due on February 29, 2008  
 26 but Petitioner sought an extension of time in which to file. To date, the Court has not ruled on the  
 27 extension request, and Petitioner has not filed a traverse. However, once a traverse is filed, the habeas  
 28 claim will be fully briefed and ready for determination on the merits by the Court.

1 On January 14, 2008, after this Court's order to show cause, but prior to submission of the  
2 Government's Return, Petitioner filed a Motion to Certify as Class Action the above habeas claim  
3 ("Motion"). Petitioner initially failed to serve the United States Attorney. Therefore, the U.S.  
4 Attorney's Office did not become aware of the Motion until January 28, 2008 when petitioner mailed  
5 a copy of the motion to the attention of the undersigned counsel. Petitioner's Motion also failed to  
6 comply with this Court's Civil Local Rules. Specifically, Petitioner failed include a Notice of Motion  
7 and a time and date for hearing on the Motion pursuant to Civil Local Rule 5.1 ("Rule 5.1"). Petitioner  
8 also failed to include a Memorandum of Points and Authorities in support of the Motion pursuant to  
9 CivLR 7.1 ("Rule 7.1"). Accordingly on March 1, 2008, this Court issued a discrepancy order on  
10 Petitioner's Motion for failure to comply with Local Rules. The Court accepted the Motion *nunc pro*  
11 *tunc*.

12 Rule 7.1 states that "a movant's failure to file any papers required under the local rules may be  
13 deemed as a waiver of the motion, or other request for ruling by the court." CivLR 7.1(f)(b). Further,  
14 CivLR 41.1 provides that "failure to comply with the provisions of the local rules of this court may also  
15 be grounds for dismissal." CivLR 41.1(b). Here, Petitioner has not corrected the discrepancies  
16 identified by the Court to date. Specifically, Petitioner's Motion continues to lack a memorandum of  
17 point and authorities in support as a separate document in violation of Rule 7.1. Petitioner's Motion  
18 also continues to lack a time and date on the Motion and/or supporting documentation in violation of  
19 Rule 5.1. It is well settled that a district court may dismiss an action or motion based on a party's failure  
20 to prosecute an action, failure to obey a court order, or failure to comply with local rules. See  
21 Thompson v. Housing Auth., 782 F.2d 829, 831 (9th Cir. 1986) ("District courts have the inherent  
22 power to control their dockets and "in the exercise of that power, they may impose sanctions including,  
23 where appropriate, dismissal of a case."); Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)  
24 (dismissing action for non-compliance with local rule). Accordingly, the Government respectfully  
25 requests that this Court deem Petitioner's Motion to Certify Class Action as waived under Rule 7.1 or  
26 dismiss the Motion pursuant to Rule 41.1.

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1           Alternatively if the Court determines that the Motion should not be dismissed, the Government  
2 requests that the Court set a time and date for hearing in order to permit the Government an opportunity  
3 to oppose class certification under Fed. R. Civ. P. 23.

4           Dated: March 7, 2008

Respectfully submitted,

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